



To the Honorable Council
City of Norfolk, Virginia

May 13, 2014

From: John M. Keifer, Director of Public Works

Subject: Ordinance to approve a
Right of Entry Agreement with S.B.
Ballard Construction Company

Reviewed:

Ronald H. Williams, Jr., Assistant City
Manager

Ward/Superward: 4/7

Approved:

Marcus D. Jones, City Manager

Item Number:

R-11

I. **Recommendation:** Adopt Resolution

II. **Applicant:** City of Norfolk

III. **Description**

This agenda item is an ordinance approving a Right of Entry Agreement with S.B. Ballard Construction Company on property of the City of Norfolk located at 1106 Campostella Road.

IV. **Analysis**

The City of Norfolk desires to move forward with the design and construction of Campostella Elementary School. The S.B. Ballard Construction Company would like this right of entry to design and to demolish the existing school. A Right of Entry Agreement will allow both parties to move forward with their desired goals.

V. **Financial Impact**

Repairs and indemnification are addressed in the Right of Entry Agreement; therefore, there should be no financial risk to the city.

VI. **Environmental**

Prior to any demolition or construction, S.B. Ballard Construction Company will need to obtain permits from the Bureau of Environmental Services, Department of Planning and Community Development for erosion, sediment and environmental controls.

VII. Community Outreach/Notification

Public notification for this agenda item was conducted through the City of Norfolk's agenda notification process.

VIII. Board/Commission Action

N/A

IX. Coordination/Outreach

This letter has been coordinated with the Department of Public Works and the City Attorney's office.

Supporting Material from the Department of Public Works:

- Ordinance
- Exhibit "A"

4/24/2014-km

Form and Correctness Approved:

RAP

By

Martha P. McBurn

Office of the City Attorney

Contents Approved:

John Kuf

By

DEPT. Public Works

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE APPROVING A RIGHT OF ENTRY AGREEMENT WITH
S.B. BALLARD CONSTRUCTION COMPANY.

- - -

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the terms and conditions of a Right of Entry Agreement ("Agreement") between the City of Norfolk ("City") and S.B. Ballard Construction Company ("Ballard"), a copy of which is attached hereto as Exhibit A, are hereby approved.

Section 2:- That the City Manager, and other proper officers of the City, are authorized to execute the Agreement on behalf of the City.

Section 3:- That the City Manager is further authorized to correct, amend or revise the Agreement as he may deem necessary in order to carry out the purposes as stated therein.

Section 4:- That this ordinance shall be in effect from and after the date of its adoption.

RIGHT OF ENTRY

This **RIGHT OF ENTRY AGREEMENT** is made by and between the **CITY OF NORFOLK** (the "City"), a municipal corporation of the Commonwealth of Virginia ("City"), grantor, and **S.B. BALLARD CONSTRUCTION COMPANY**, ("Ballard"), grantee is made this ____ day of May, 2014.

WITNESSETH

For and in consideration of the sum of one dollar (\$1.00), the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City grants Ballard the right to enter the property described in Exhibit A (the "Property") for the purpose of performing a site investigation to prepare design drawings for construction of a new school.

1. **TERM.** This Right of Entry shall extend for the period from the execution of this Agreement from the date of execution of this Right of Entry through the execution of an Interim Agreement under the Public-Private Education Facilities and Infrastructure Act of 2002, Va. Code § 56-575.1 *et seq.*

2. **TRANSFER OR ASSIGNMENT.** Ballard shall not transfer nor assign this Right of Entry without the prior written consent of the City.

3. **PROPERTY.** The City shall have access to the Property at all times.

4. **REPAIRS AND INDEMNIFICATION.** Ballard shall repair any damage that it shall do to the Property and other property of the City. Ballard agrees that it will defend, indemnify and save harmless the City, its officers, employees, agents and representatives against and from any and all liabilities, suits, actions, claims, demands, damages, losses, expenses and costs, of every kind and nature, incurred by, or asserted or imposes against them or any of them,

by reason of any accident, injury (including death) or damage to any person or property to the extent caused by the negligent acts of Ballard, its agents, employees, assignees, sublessees, contractors, subcontractors or invitees or any use, nonuse, possession, occupation, condition, operation, service, design, construction, maintenance or management of, or on, or in the property, or any part thereof and regardless of whether such liabilities, suits, actions, claims, demands, damages, losses, expenses and costs against, suffered or sustained by the City or be against, suffered by or sustained by, other person, corporations, or other legal entities to whom the City or any of its agents or employees, may become liable therefor. Ballard may and, if so requested by the City, shall undertake to defend, at its sole cost and expense, any and all suits, actions or proceedings brought against the City, or any of its agents or employees, in connection with any of the matters set forth in this paragraph, to the extent that the duty to defend is caused by the negligence of Ballard, its agents, employees, assignees, sublessees, contractors, subcontractors or invitees.

5. **ENTIRE RIGHT OF ENTRY.** This Right of Entry contains the entire agreement of the parties hereto relating to the Right of Entry of the Property by the City to Ballard and no prior representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied therein, shall be of any force or effect. Any amendments to this Right of Entry shall be in writing and signed by the parties.

(SIGNATURE PAGES TO FOLLOW)

CITY OF NORFOLK

By: _____
City Manager

ATTEST:

City Clerk

S.B. BALLARD CONSTRUCTION COMPANY

By: _____
President

Contents Approved:

Director of Public Works

Form and Correctness Approved:

Deputy City Attorney

EXHIBIT A

**Campostella Elementary School
At 1106 Campostella Road
Norfolk, Virginia**

All those four certain lots, pieces or parcels of land situate, lying and being in the City of Norfolk, Virginia, at the southeast corner of the intersection of Campostella Road and E. Indian River Road, said parcels are identified on the Real Estate Tax records as Tax Accounts 05946600 (not addressed), 78015010 (1106 Campostella Road), 78009610 (1400 Campostella Road) and 78016810 (1410 Campostella Road.)

April 24, 2014